

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of: )  
)  
JUVENILE DETENTION WORKERS ) CASE 17959-E-03-2902  
ASSOCIATION )  
) DECISION 8697 - PECB  
Involving certain employees of: )  
)  
CHELAN COUNTY ) ORDER OF DISMISSAL  
)  
\_\_\_\_\_ )

*Mike Mathena*, Representative, for the Juvenile Detention Workers Association.

Jeffers, Danielson, Sonn, Aylward, by *Stanley A. Bastian*, Attorney at Law, for the employer.

Davies, Roberts and Reid, by *Todd A. Lyon*, Attorney at Law, for the incumbent intervenor, Teamsters Local 760.

On October 31, 2003, the Juvenile Detention Workers Association (JDWA) filed a petition for investigation of a question concerning representation with the Public Employment Relations Commission under Chapter 391-25 WAC, seeking certification as exclusive bargaining representative of a bargaining unit limited to employees in the Juvenile Custody section of the Juvenile Services Department of Chelan County (employer). Teamsters Local 760 was granted intervention in the proceedings, based on its status as the incumbent exclusive bargaining representative of the employees involved. During an investigation conference conducted on January 9, 2004, the parties framed issues concerning: (1) whether the Juvenile Detention Workers Association is an organization qualified for certification under the statute; and (2) the propriety of the petitioned-for bargaining unit. Hearing Officer Claire Collins

held a hearing on March 24, 2004. The JDWA and Local 760 filed post-hearing briefs.

Based on the evidence and arguments, the Executive Director concludes that the petitioned-for bargaining unit is not an appropriate unit for the purpose of collective bargaining. The petition is DISMISSED.

#### BACKGROUND

The pertinent bargaining relationship between the employer and Local 760 dates back to 2000, when Local 760 was certified in 2000 for a bargaining unit of professional, technical and office-clerical employees (PTC) in several departments. The latest collective bargaining agreement, which was effective from January 2001 through December 2003, described that unit as follows:

All regular full-time and regular part-time employees of the Chelan County Assessor's office, Auditors office, Building and Planning department, Clerk's office, Horticulture department, Facilities Maintenance department, District Court, District Court Probation, DIS department, Extension office, Juvenile Services department, Prosecuting Attorney Support Personnel, Treasurer's office, Public Works office crew, Noxious Weed, Solid Waste, Solid Waste Planning/Programs and Motor Pool.

There are approximately 170 employees in that bargaining unit. The employer and Local 760 were negotiating a successor contract when the petition was filed to initiate this proceeding.

The bargaining unit proposed in this proceeding is limited to 24 employees who are only a portion of the Juvenile Services Department workforce. The JDWA has advanced various arguments in support of its petition, while Local 760 has opposed the severance of the

juvenile detention employees from the larger existing bargaining unit.<sup>1</sup> The employer provided background information and information on its organization, but did not take a position on the propriety of the proposed unit.<sup>2</sup>

## ANALYSIS

### Applicable Legal Standards

The Legislature has delegated the determination and modification of appropriate bargaining units to the Commission, as follows:

In determining, modifying, or combining the bargaining unit, the commission shall consider the duties, skills, and working conditions of the public employees; the history of collective bargaining by the public employees and their bargaining representative, the extent of organization among the public employees, and the desire of the public employees.

RCW 41.56.060. The "history of bargaining" component takes on particular significance where an organization seeks to represent only a portion of an existing bargaining unit.

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<sup>1</sup> During the investigation conference, Local 760 questioned the status of the JDWA as a labor organization. It was later supplied a copy of the JDWA bylaws. At the hearing, Local 760 only asserted the JDWA lacked the experience required by the "severance" criteria.

<sup>2</sup> During the investigation conference, the employer questioned the jurisdiction of the Commission based on litigation then pending concerning the effect of a rule adopted by the Supreme Court of the State of Washington. It abandoned that argument after the Supreme Court ruled that its rule did not conflict with Chapter 41.56 RCW. *WSCCCE Council 2 v. Susan Hahn and Ruth Reukauf*, 151 Wn.2d 163 (2004).

In decisions dating back to *Yelm School District*, Decision 704-A (PECB, 1980), the Commission has embraced a set of "severance" criteria set forth in *Mallinckrodt Chemical Works*, 162 NLRB 387 (1966), as follows:

1. Whether . . . the proposed unit consists of a distinct and homogeneous group of skilled journeymen craftsmen performing the functions of their craft on a non-repetitive basis or of employees constituting a functionally distinct department, working in trades or operations for which a tradition of separate representations exists.
2. The history of collective bargaining of the employees sought and at the plant involved, and at other plants of the employer, with emphasis on whether such stability will be unduly disrupted by the destruction of the existing pattern of representation.
3. The extent to which the employees in the proposed unit have established and maintained their separate identity during the period of inclusion in a broader unit, and the extent of their participation or lack of participation in the establishment and maintenance of the existing pattern of representation and the prior opportunities, if any, afforded them to obtain separate representation.
4. The history and pattern of collective bargaining in the industry involved.
5. The degree of integration of the employer's production processes, including the extent to which the continued normal operation of the production processes is dependent upon the performance of the assigned functions of the employees in the proposed unit.
6. The qualifications of the union seeking to "carve out" a separate unit, including that union's experience in representing employees like those involved in the severance action.

*Clover Park School District*, Decision 7052 (PECB, 2000). The severance criteria will sometimes require rejection of a unit that could have been found appropriate in initial organizing.

Each bargaining relationship inherently has the potential to become a long-term relationship. The Commission wrote:

Absent a change of circumstances warranting a change of the unit status of individuals or classifications, the unit status of those previously included in or excluded from an appropriate unit by agreement of the parties or by certification will not be disturbed.

*City of Richland*, Decision 279-A (PECB, 1978), *aff'd*, 29 Wn. App. 599 (1981), *review denied*, 96 Wn.2d 1004 (1981). That principle has since been codified in WAC 391-35-020.

#### Application of Standards

##### Crafts or Trade -

Specialized training and education is needed for employees to qualify as skilled crafts and/or trades workers. In this case, there is no evidence of the specialized training or apprenticeship programs customarily associated with the skilled crafts and trades:

- Neither the job description for the "juvenile custody officer" nor the job description for the "juvenile custody supervisor" requires any particular training prior to hiring.
- Both positions require completion of two weeks training in the security workers academy, but that can be completed any time within six months after the date of hire and employees have two opportunities to successfully complete the requirement.
- The supervisor position requires only two years of experience as a custody officer, and completion of a one-week supervisory academy. A general requirement for two years of college education does not equate with the "specialized training" requirement of the severance criteria, nor does it connote any specific course of study.

- JDWA representative Mathena testified that a "two years of college" requirement was made applicable to the custody officer position in the past year, but no such requirement is documented in the job description. Even if it was written out, such general education requirements do not substitute for specific training.

Thus, this record does not support the designation of the proposed bargaining unit as a skilled craft or trade unit.

History and Pattern of Bargaining and Participation -

The bargaining relationship between the employer and Local 760 for the existing bargaining unit has existed since the issuance of an interim certification on May 16, 2000. *Chelan County*, Decision 7170 (PECB, 2000). The history of bargaining developed by the employer and Local 760 must be considered, and the evidence in this case does not rise to the level required to support severance.

The unit from which severance is sought is the largest bargaining unit in the employer's workforce. The unit proposed by the JDWA constitutes only about 14 per cent of the employees in the existing unit. This case is aptly compared to *Spokane County*, Decision 7866 (PECB, 2002), where a proposed severance was rejected:

[T]he proposed unit limited to one of three divisions within the facilities department is clearly part of a larger operation. Thus, there is every reason for concern that allowing the severance proposed in this case would set a precedent for further unraveling of labor-management relationships and stability and eventually leading to excessive fragmentation of the bargaining process.

The evidence in this proceeding does not support a conclusion that the creation of a separate bargaining unit will contribute to the stability of labor-management relations in Chelan County.

Separate Identity and Extent of Participation -

No evidence was presented to show that the proposed bargaining unit consisting of one section within a multi-section department has maintained a separate identity within the existing multi-department bargaining unit. To the contrary, the evidence indicates that employees in the Juvenile Services Department actively participated in the negotiations for the first collective bargaining agreement between the employer and Local 760, as well as in the negotiations for a successor agreement up to the time the petition was filed. All of the employees in the existing bargaining unit are covered by the same wage scale and receive the same benefits. Employees in the Juvenile Services Department have filed grievances, and Local 760 has processed grievances for juvenile custody employees.<sup>3</sup>

Integration in Employer's Operation -

As described by the testimony of County Administrator Mulhall and job descriptions in evidence, the Juvenile Services Department workforce includes several types of positions. Separate detention, probation and court staff sections do exist within the department. On the other hand, the fact that department employees work in physically separate locations is countered by the classification descriptions for receptionist/secretary, juvenile probation counselor, diagnostic coordinator, CRC program coordinator,<sup>4</sup> and administrative specialist, each of which indicates the need for day-to-day working relationships with the detention workers at issue in this proceeding. Testimony also indicated that the petitioned-for employees have ongoing interaction with employees in the employer's facilities and maintenance department. An organization chart indicates that the juvenile custody supervisors also

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<sup>3</sup> One pending grievance is awaiting arbitration.

<sup>4</sup> The "CRC" acronym was not defined or explained in this record.

have working relationships with a detention school program, a residential youth counselor, CRC/CCP/SRP,<sup>5</sup> and detention volunteers. The custody, probation, court and office-clerical positions are within the existing bargaining unit from which severance is sought. This record supports a conclusion that the positions sought by the JDWA are fully integrated into the employer's overall operation.

Qualifications of the Petitioner -

This component of the *Mallinckrodt* criteria was likely directed to the craft unions that had long histories of separately representing the members of their particular crafts. The JDWA is an independent organization which was apparently created for the specific purpose of filing this petition. The best that can be said here is that the JWDA representative testified that he has had experience in bargaining with another labor organization.

Change of Circumstances -

There was no evidence to support that a change of circumstance has occurred.

FINDINGS OF FACT

1. Chelan County provides typical county services, including the operation of a juvenile detention facility.
2. The Juvenile Detention Workers Association has filed a timely and properly supported petition seeking certification as exclusive bargaining representative of a proposed unit limited to 24 employees working as juvenile custody officers and

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<sup>5</sup> The "SRP" acronym was also not defined or explained in this record.



juvenile custody supervisors in the Juvenile Services Department of Chelan County.

3. The JDWA was formed recently by employees, for the purpose of seeking certification as an exclusive bargaining representative in collective bargaining. It has not established that it has any past experience or special expertise with the representation of juvenile detention employees.
4. Teamsters Local 760, a bargaining representative within the meaning of RCW 41.56.030(3), has been granted intervention based upon its status as the incumbent exclusive bargaining representative of a bargaining unit of Chelan County employees which includes the Juvenile Services Department. Local 760 continues to be a viable organization, and continues to have an interest in representing the employees of Chelan County.
5. Chelan County and Local 760 have had a bargaining relationship for the existing bargaining since 2000, and were parties to a collective bargaining agreement that was effective for 2001 through 2003. The juvenile detention employees have been included in that bargaining unit throughout its existence, have been represented by shop stewards, have participated in the negotiation of collective bargaining agreements, and have shared wages, hours and working conditions in common with other bargaining unit members. The record does not reflect any alleged or actual failure of the incumbent exclusive bargaining representative to adequately represent the juvenile detention employees.
6. The juvenile custody officers and juvenile detention supervisors do not constitute skilled journeymen practicing a historic craft.

7. The juvenile custody officers and juvenile custody supervisors work as part of an integrated operation essential to the performance of the overall mission of the Juvenile Services Department.
8. There is no evidence that the juvenile custody officers or juvenile custody supervisors have ever had separate representation for the purposes of collective bargaining.
9. The juvenile detention employees at issue in this proceeding work in close coordination with other employees in the Juvenile Services Department and with employees in other Chelan County departments, so that they do not constitute a separate and distinct work group.
10. The record in this proceeding does not contain any evidence of significant changes of circumstance affecting this case.

#### CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under Chapter 41.56 RCW and Chapter 391-25 WAC.
2. The Juvenile Detention Workers Association is a bargaining representative within the meaning of RCW 41.56.030(3).
3. The petitioned-for bargaining unit limited to juvenile custody officers and juvenile custody supervisors employed in the Juvenile Services Department of Chelan County is not an appropriate unit for the purposes of collective bargaining within the meaning of RCW 41.56.060, so that no question

concerning representation currently exists under RCW 41.56.060 and 41.56.070.

ORDER

The petition for investigation of a question concerning representation filed in the above-captioned matter is hereby DISMISSED.

Issued at Olympia, Washington, on this 27<sup>th</sup> day of August, 2004.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, Executive Director

This order will be the final order of the agency unless a notice of appeal is filed with the Commission under WAC 391-25-660.